

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1002

SPONSOR: Senate Education Committee

SUBJECT: Public Records and Public Meetings/Blueprints for Educational Facilities

DATE: February 22, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates an exemption from chapter 119, Florida Statutes, the Public Records Law, and Section 24(a), Article I of the State Constitution for portions of the blueprints of each educational facility, as defined in s. 235.011(6), F.S., and each blueprint of a state university facility which is determined to be confidential and exempt by rule and which is submitted to a law enforcement agency, the Department of Education, and the State Board of Education. The blueprints are also confidential and may be released to and used by other governmental entities as needed in connection with their duties.

The bill also creates an exemption from the Public Meetings Law, s. 286.011, F.S., and Section 24(b), Article I of the State Constitution for portions of all meetings and proceedings of any agency as defined in s. 119.011(2), F.S., that would reveal confidential and exempt information set forth in rule relating solely to the blueprints of an educational facility or a state university. The bill provides a list of persons with a bona fide need to know confidential and exempt information. The Department of Education and the Board of Regents must determine by rule what information in facility blueprints is confidential and exempt and those persons with a bona fide need to know this information. The bill also provides findings of necessity to justify the creation of the exemption and subjects the exemption to a review prior to a repeal date of October 2, 2005.

This bill creates two sections of law that have not been designated to specific sections of the Florida Statutes.

II. Present Situation:

In June 1999, the President of the Senate appointed a bipartisan task force to address the issue of school safety. The task force recommendations included the following:

The Legislature should:

- ▶ consider mandating access by law enforcement personnel and others, including the Florida Department of Education and the State Board of Education, to the blueprints of each school.

- ▶ create a public records exemption for these documents.

In response to this recommendation, the Florida Department of Law Enforcement recommended that the Senate Committee on Education consider making all school blueprints confidential and accessible only to local or state public safety entities (e.g., personnel in law enforcement, fire protection, and emergency medical services).

Public Records and Public Meetings Laws

The Public Records Law, chapter 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met.

Article I, s. 24 of the Florida Constitution governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. The Constitution also provides that any bill that contains an exemption may not contain other substantive provisions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. As well, the law provides that exemptions must be created or maintained only if specific criteria are met.

Under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this provision, only information that would identify the individuals may be exempted; or

3. protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Blueprints

Although the term “blueprint” is not defined in law, there are several provisions that address blueprints, including trade secrets and security systems.

▶ Trade secrets

The Legislature created exemptions from chapter 119, F.S., related to trade secrets as defined in s. 812.081, F.S.¹ The law provides criminal penalties for the theft of trade secrets and the theft or copying (without authority) of an article representing a trade secret. Article means any object, device, machine, material, substance, or composition of matter, or any mixture or copy, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, *blueprint*, map, or copy. Section 815.04(3)(a), F.S., provides that a limited category of trade secrets (e.g., data, programs, or supporting documentation which resides or exists internal or external to a computer, computer system, or computer network) is confidential and exempt from the public records law. The law also provides criminal penalties for offenses against intellectual property. An Attorney General Opinion (AGO 97-87) noted that the fact that information constitutes a trade secret does not remove it from the requirements of the public records law.

▶ Security Plans

Section 281.301, F.S., provides that information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency are confidential and exempt from ss. 119.07(1) and 286.011, F.S., and other laws and rules requiring public access or disclosure.² This includes all records, information, photographs,

¹Trade secret means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. This includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

secret;

of value;

for use or in use by the business;

and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

² Section 119.011(2), F.S., defines an "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. The Florida Supreme Court held that courts should use a "totality of factors" test for determining when a private entity is acting sufficiently on behalf of a public agency to subject it to the public records law. The court set forth a non-exclusive list of 9 factors. (596 So.2d 1029

audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal these systems or information. The term “state-owned office building” is defined in s. 255.248, F.S., and the Department of Management Services is specifically excluded from custodial authority and preventive maintenance, repair, and space allocation for all educational facilities and institutions supervised by the Florida Department of Education.

Under s. 331.22, F.S., airport security plans of an aviation authority created by act of the Legislature or of an aviation department of a county or municipality which operates an international airport are exempt from disclosure. In addition, except as otherwise provided in this section, specified materials (e.g., photographs, maps, *blueprints*, drawings, and similar materials) *that depict critical airport operating facilities are exempt, to the extent that the aviation authority or aviation department which operates an airport reasonably determines that such information is not generally known and could jeopardize the airport’s security. However, information relating to real estate leases, layout plans, blueprints, or relevant information is not included in this exemption.* The exemptions in this section are applicable only to records held by an aviation authority created by act of the Legislature or to records of a county or municipal aviation department that operates an airport.

Several provisions of law require or permit the submission of building plans or building design calculations to local governments for permitting purposes (e.g., s. 553.79(2), F.S., and s. 489.131(3)(d), F.S.) There are currently no exemptions or exceptions from the public records law for these plans.

Educational Facilities

Chapter 235, F.S., provides for facilities construction for public school districts and community colleges, although there are other provisions in part III of chapter 240, F.S., for community colleges. Under s. 235.011(6), F.S., “educational facility” means the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards. “Boards” are defined (unless otherwise specified in chapter 235, F.S.), as a district school board, a community college board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term does not include the State Board of Education or the Board of Regents.

The law (s. 235.211(4), F.S.) requires the services of a registered architect for the development of plans for the erection, enlargement, or alteration of any educational facility. There are, however, exceptions (e.g., minor renovation projects under a specified dollar threshold and the placement or hookup of certain relocateables). As well, s. 481.229, F.S., provides exemptions from the licensure requirements for architects for certain professions (e.g., construction contractors and engineers). The law also requires plans to be reviewed for compliance with state requirements for educational facilities.

Boards may use various options for the review of construction documents to determine compliance with building, life safety, and other codes. The options include the use of the Department of Education, the Department of Management Services, or board employees or persons under contract with the board who are licensed engineers or licensed architects. Other provisions of law that address the approval of plans or construction documents include ss. 235.26, 235.014(7), and 235.0155, F.S. Effective January 1, 2001, s. 553.80 (6), F.S., subjects state universities, state community colleges, and public school districts to the enforcement of the Florida Building Code and allows state universities, state community colleges and public school districts to conduct plan reviews and construction inspections for certain projects. These entities must have inspectors and plans review personnel who are certified under part XII of chapter 468, F.S. These entities may elect to use a local government for plans review and inspection.

District school boards and the board of trustees of community colleges are responsible for ensuring that plans and plants meet specific standards. Boards are responsible for maintaining records of the project's completion and permanent archival of phase III construction documents, including any addenda and change orders. District school superintendents must recommend plans and execute approved plans for all phases of the school plant program, as prescribed in chapter 235, F.S. According to staff for the Executive Office of the Governor, the State Board of Education approves a set of standards for schools but does not currently receive copies of the blueprints for schools, since many of the functions involving the use of these documents are addressed at the local level.

A brief questionnaire about facility blueprints was sent to school districts by staff for the Florida Association of District School Superintendents. Responses were provided to Committee staff for the following districts: Seminole, Santa Rosa, Indian River, Miami-Dade, Wakulla, Hernando, Hillsborough, Palm Beach, Pasco, Collier, and Broward. According to the district school board responses, the following materials contain information that is the same or similar to the information found in blueprints: the Florida Inventory of School Houses (FISH) drawings; books of small scale drawings produced for each site; aerial and other photographs; school plant surveys; and specifications manuals.

The law (s. 235.26(5)(c), F.S.) provides that boards must maintain records of the completion of construction projects and permanent archive of phase III construction documents, including any addenda and change orders. In addition, school district survey respondents noted that blueprints are generally maintained at the district level by either the superintendent or his or her designee.

According to several district school boards, copies of blueprints or related documents are currently provided to law enforcement agencies on a regular basis. In other instances, the documents are available to law enforcement agencies upon request. The Florida Department of Law Enforcement (FDLE) does not routinely access school blueprints. However, FDLE has recently assisted local agencies in obtaining and placing into an electronic format blueprints of local schools for use in developing school critical incident response plans.

Blueprints/construction drawings are also used for the following purposes: to assess school plants; to execute a tactical response to a critical incident such as a shooting or a hostage situation; for code compliance; for construction management; for contract administration; and for a reference for all building modifications. Copies are kept with property files for insurance

purposes. These documents are also used in procuring construction bids. According to the Department of Education, subcontractors and suppliers develop shop drawings when construction documents are processed during the construction phase of a project. These documents include parts of the project in much greater detail for installation of specific materials and equipment. Construction documents are placed on film in public bid organizations such as “Dodge Reports.” This allows access to a partial set of documents for subcontractors and suppliers who are interested in bidding, but are unable to afford the cost of reproducing a full set of documents.

Other entities that have access to blueprints/construction drawings include: all contractors, subcontractors, suppliers, equipment manufacturers, and others who are not successful in the public procurement process; fire and safety inspectors; and emergency management personnel. For the projects reviewed by the Florida Department of Education, copies of the construction documents are microfilmed by the Department of State and sent to the Department of Education. The Department of State retains a copy.

State University System facilities

State University System facilities are exempt from most of the provisions of chapter 235, F.S. There is a provision in s. 235.014(7), F.S., that requires the Board of Regents (BOR) to approve specifications and construction documents for the system. Section 240.209, F.S., enumerates the powers and duties of the BOR, including a requirement for the BOR to adopt rules to administer a program for the maintenance and construction of facilities in the system. The State Board of Education must approve all rules adopted by the BOR prior to filing them with the Department of State, with an exception for rules that are not adopted by the State Board of Education within 60 days of BOR adoption.

Section 240.205(6), F.S., authorizes the BOR to acquire and contract for the sale and disposal of property and approve and execute certain contracts, including construction contracts. Also, this contract authority is specifically extended to the BOR for use by a university when the contractual obligation exceeds \$1 million. The BOR is subject to the provisions of s. 287.055, F.S. (the Consultants’ Competitive Negotiations Act), for the procurement of professional services.

The powers and duties of university presidents are set forth in s. 240.227, F.S., and include responsibilities for approving and executing contracts for construction to be rendered to or by the university and for procuring professional services.

Department of Education

Section 229.76, F.S., provides for the general functions of the Department of Education and s. 235.014, F.S., specifies the department’s functions for facilities. The law requires various boards, including the BOR, to provide the department with construction related information.

III. Effect of Proposed Changes:

The bill creates an exemption from chapter 119, Florida Statutes, the Public Records Law, and Section 24(a), Article I of the State Constitution for the portion of each blueprint of each educational facility, as defined in s. 235.011(6), F.S., and the portion of each blueprint of a state

university facility which is determined to be confidential and exempt by rule and which is submitted to a law enforcement agency, the Department of Education, and the State Board of Education. The blueprints are also confidential and may be released to and used by other governmental entities as needed in connection with their duties. This information retains its confidential and exempt status.

The bill also creates an exemption from the Public Meetings Law, s. 286.011, F.S., and Section 24(b), Article I of the State Constitution for portions of all meetings and proceedings of any agency as defined in s. 119.011(2), F.S., that would reveal specific information set forth in rule. The exemption applies to confidential and exempt information relating solely to the blueprints of an educational facility or a state university. The bill provides that the agency may hold public hearings to discuss nonconfidential information related to the blueprint. The Department of Education and the Board of Regents must determine by rule what information in facility blueprints is confidential and exempt. In order to be confidential, the information must be necessary to the facility's security and integrity.

The bill lists those persons who have a bona fide need to know the confidential and exempt information: a person involved in the planning, design, site improvement, construction, contracting, remodeling, renovation, maintenance, and repair of plants and facilities, including ancillary and auxiliary facilities; a law enforcement officer; an emergency medical services provider; an authorized agent or employee of the facility; and a parent or guardian.

The bill provides findings of necessity to justify the creation of the exemption. The bill makes the exemption subject to a review prior to a repeal date of October 2, 2005, in accordance with the Open Government Sunset Review Act of 1995. The bill provides that it will take effect on the same date that an undesignated Senate bill or similar legislation takes effect. However, the bill shall not take effect if that legislation does not become law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None identified.

B. Public Records/Open Meetings Issues:

The bill (subsections (3) and (4)) lists those persons with a bona fide need to know information that is confidential and exempt. Also, the bill provides for the Department of Education and the Board of Regents to prescribe by rule those persons with a bona fide need to know this information in order to carry out their duties. The intent of the rulemaking provision may be to allow the department and the board to further identify persons from the list who have a bona fide need to know this information (e.g., the specific persons involved in the planning, design, site improvement, construction, contracting, remodeling, renovation, maintenance and repair of facilities). Although the language in the bill does not state that persons with a need to know *include but are not limited to* the persons on the list, the provision may be susceptible to this interpretation. The department and the board may

interpret this provision to allow access to information by other persons not specifically enumerated on the list. This may result in greater access than is intended.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some private entities have provided site plans, renderings, photographs, floor plans and related materials on-line as a method of distributing information to the design and construction community. The provisions of the bill will likely restrict the type of information and services that these entities currently provide on-line to members of the general public. Information that is not confidential and exempt may continue to be available on-line. Current on-line services may need to be modified to restrict access to the confidential and exempt information to only those who have a bona fide need to know. The fiscal impact on these entities is unknown at this time.

C. Government Sector Impact:

There will be some costs for the Department of Education and the Board of Regents for developing rules. Many educational facilities are currently providing law enforcement agencies and others with copies of blueprints or related materials on either diskette or hardcopy. If there are, however, educational facilities that are not currently providing blueprints to law enforcement agencies with jurisdiction, the facilities will likely incur some costs.

VI. Technical Deficiencies:

CS/CS/SBs 852, 2, and 46 imposes requirements on district school superintendents and the presidents of each community college to provide copies of facility blueprints to the Department of Education, the State Board of Education, and the law enforcement agency with jurisdiction over the educational facility and community college. It no longer requires the submission of state university facility blueprints. CS/SB 1002 still references the submission of state university facility blueprints. At some point, the provisions of CS/SB 1002 will need to be amended to conform to CS/CS/SBs 852, 2, and 46.

VII. Related Issues:

Agency determination by rule of confidential and exempt information

The Department of the Lottery, under s. 24.105(13), F.S., may determine by rule information relating to the lottery's operation which is confidential and exempt from the public records requirements. This information includes trade secrets, security measures, security systems, or security procedures, security reports, and information about bids or contractual data, the disclosure of which would impair the department's efforts to contract for goods and services on favorable terms. To be deemed confidential, the information must be necessary to the security and integrity of the lottery.

Confidential and exempt information and other agencies

The law (s. 24.105(13), F.S.) also allows confidential information to be released by the Department of the Lottery to other governmental entities as needed in connection with the performance of their duties. However, these entities must retain the confidentiality of the information. Similarly, s. 501.2065, F.S., provides that criminal or civil intelligence, investigative, or any other information held by any state or federal agency that is available to the Department of Legal Affairs retains its confidential and exempt status.

Exemptions for portions of public meetings

There are existing provisions of law that exempt portions of meetings from the public meetings law, including s. 400.007(2), F.S. (relating to the discussion of confidential and exempt information in long-term care ombudsman council meetings); s. 413.615(7)(a) and (b), F.S. (relating to portions of meetings of the Florida Endowment Foundation for Vocational Rehabilitation that identify donors or prospective donors or the identities of clients or applicants to the Division of Vocational Rehabilitation); and s. 397.419(7), F.S. (relating to meetings or portions of meetings of quality assurance program committees for substance abuse treatment services that relate solely to specific actions taken). One exemption (s. 627.311(3)(l)2., F.S.) specifically provides that no portion of any closed meeting may be off the record. The closed meetings must be recorded by a court reporter and a copy of the transcript of closed meetings, less any exempt matters, becomes public at a specified time.

Other provisions

Part I of chapter 455, F.S., provides the general authority and responsibilities of the Department of Business and Professional Regulation and boards for the regulation of professions. Chapter 489, F.S., provides three separate parts for the regulation of contractors, electrical contractors, and septic tank contractors. Contractors and electrical contractors are licensed by the Construction Industry Licensing Board (part I) and the Electrical Contractors' Licensing Board (part II), respectively. The Department of Health regulates septic tank contractors pursuant to part III of chapter 489, F.S. Chapter 471, F.S., provides for the regulation of the practice of engineering by the Board of Professional Engineers and the Florida Engineers Management Corporation provides administrative, investigative, and prosecutorial services to the board. Part I of chapter 481, F.S., provides for the regulation of the practice of architecture by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation.

The law (s. 471.025, F.S.) requires that all final drawings, specifications, plans, reports, or documents prepared by a licensed engineer to be filed for public record must be signed by an engineer, dated, and stamped with the required seal. The law (s. 481.221, F.S.) requires that all final construction documents and instruments of service which include drawings, plans, specifications, or reports prepared by a licensed architect to be filed for public record must be

signed by an architect, dated, and sealed. The signature, date, and seal of engineers and architects are evidence of authenticity.

An Attorney General Opinion (AGO 97-84) concluded that architectural and engineering plans under seal pursuant to ss. 471.025 and 481.221, F.S., that are held by a public agency in connection with the transaction of official business are subject to inspection and copying under the public records law. According to the Board of Professional Engineers, those plan sheets that are provided to contractors or subcontractors for bid purposes and that are not plans filed with any federal, state, county, district, authority, municipal, or other governmental agency in connection with the transaction of official business are not considered record plans. As such, these plans do not require the impression seal, signature, or date.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
